IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2916 OF 1996

Jagannath Jayram Sankhe, aged about 64 yrs.,occ.Retired from Govt.Service, r/a. Room No.3, Subhash Sadan, Chandravarkar Marg, Borivali (W),Mumbai -92 and also at Pam Tembhi, Tal. Palghar, Dist. Thane.) ..Petitioner.

Versus

1. State of Maharashtra, through the Secretary, Revenue & Forest Dept. Mantralaya, Mumbai-32) ..Respondents.

2. Collector of Thane, Thane.)

Mr. Vikram Pai for the Petitioner.
Mr. A.H. Palekar, AGP for the Respondents.

CORAM : S. A. BOBDE, J.
DATED : 10TH OCTOBER, 2005.

ORAL JUDGMENT -:

1. The petitioner is aggrieved by the rejection of his request for allotment of land under Rule 28 framed under the Maharashtra Land Revenue Code, 1966 by the Government without giving any reason. The petitioner, having retired as Under Secretary from the Government service in Rural Development Department in May, 1988, had applied on 28.08.1980 for allotment of a strip of plot of land in Palghar taluka at village Pantambhi and/ or at village Saravali, which is his

native place. He requested for a strip of land in Survey No. 110-A. Rule 28 framed under the Land Revenue Code, 1966, which governs grant of land reads as follows :-

> "28. Grant of land to freedom fighters, members of armed forces, old smiths and Government Servants -
>
> (1) subject to the provisions of this rule, building sites of suitable sizes may on receipt of an application in that behalf, be granted for residential use by the Collector, freedom fighters, serving members of the armed forces and ex-servicemen who are ordinarily residents in the State for not less than fifteen years, goldsmiths, who are ordinarily residents in the State for not less than fifteen years immediately before the commencement of the Gold Control Order made under the Defence of India Act 1962 and to Government servants of the State Government without auction and occupancy rights under section 20 read with section 31.
>
> (a) Provided that the Collector, shall not

make any such grant in respect of a building site :-

(a) situated within the limits of any Municipal Corporation or Metropolitan Region, except with the previous sanction of the State Government.

(b) where the occupancy price exceeds rupees ten thousand but does not exceed rupees twentyfive thousand, except with the previous sanction of the Commissioner; and

(c) where the occupancy price exceeds rupees twentyfive thousand except with the previous sanction of the State Government.

(2) Such grant may be made on inalienable tenure on payment of occupancy price which may be determined having regard to the factors specified in sub-rule (3) of rule 26, if the Collector, after necessary enquiries, is satisfied that these persons do not own any building plot a building either in their own name or in the name of any member of their family anywhere in any urban area of the State

or outside the State.

(3) A serving member of the armed forces or an ex-servicemen (or he is dead or is unable to write for any reason, then his wife, major, on father mother or brother in an undivided family), may make an application for grant of land for residential use to the Collector. Such application shall be made through the Chairman, District Sailors, Soldiers and Airmen's Board.

2. At one stage, as it appears from the letter of the S.D.O. dated 03.04.1986, that there seems to have been some confusion since the petitioner's brother's name also begins with 'J'- for Janardhan and he had been allotted a piece of land. Due to this confusion, it was believed that the petitioner has been granted that land on the basis that one J. J. Sankhe has been granted vacant land. Thereafter, the petitioner pursued the matter and waited for allotment of land. He also made a representation. He was informed that he has not been given land since he has retired. The said representation has been rejected on 30th June, 1992. The said rejection subsequently reiterated on

20.12.1995 vide Exh.‘J’. Thereafter, again on 26th May, 1992 the respondent No.1 informed the petitioner that his application cannot be considered. However, none of the letters rejecting the petitioner’s request gave any reason. There is no dispute that the petitioner does not have an absolute right for allotment of land, but he has certainly a right to have his request considered in accordance with the rule and for reasons as to why he is not entitled to allotment of the land as prayed for if he is not entitled.

3. In this view of the matter, the respondent No.2 is directed to consider the petitioner’s representation and take a decision on the petitioner’s application for allotment of a piece of land afresh. The petitioner may be heard before deciding his application. Having regard to the pendency of the matter, the petitioner would be at liberty to make a request for a piece of land at an alternate place. It must be noted that this court had granted interim relief in terms of prayer clause (d), which reads as follows :-

> "d) Pending the hearing and final disposal of this above petition, direct the Respondents

by mandatory order and direction to reserve a portion/strip of plot/ of land admeasuring about 5 gunthas at Survey No. 110-A at Village Saravali, Tal. Palghar, Dist. Thane;"

4. However, if for some reasons it has become impossible to allot the said reserve plot, the petitioner will be entitled to make a request for an alternate piece of land and the same may also be considered by the Collector as if such a request is made by the petitioner for the piece of land mentioned in the petition.

5. The Collector shall decide the petitioner's application in accordance with law and on its own merits as early as possible .

6. Petition is disposed of in the above terms.

DT. 10.10.05 (S.A.BOBDE,J)

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